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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Report of the Committee on the Rights of Persons with Disabilities on its nineteenth session (14 February–9 March 2018)

I. States parties to the Convention and the Optional Protocol thereto

1. As at 9 March 2018, the date on which the nineteenth session closed, there were 176 States parties to the Convention on the Rights of Persons with Disabilities and 92 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available on the website of the Office of Legal Affairs of the Secretariat.

II. Opening of the nineteenth session of the Committee

2. The nineteenth session opened in a public meeting with welcoming remarks by the Chair of the Committee. The opening statement of the Office of the United Nations High Commissioner for Human Rights (OHCHR) was delivered by the Director of the Human Rights Council and Treaty Mechanisms Division and is available on the Committee's website. The Chair also delivered a statement and submitted a report on intersessional activities, also available on the Committee's website.

3. The Committee reviewed and adopted the provisional agenda and tentative programme of work for the nineteenth session (CRPD/C/19/1).

III. Membership of the Committee

4. The list of members of the Committee as at 9 March 2018, indicating the duration of their terms of office, is available on the Committee's website.

IV. Working methods

5. The Committee discussed various issues related to its working methods and adopted the decisions contained in annex I to the present report.

V. Activities related to general comments

6. The Committee considered the report of its working group on the right to equality and non-discrimination on progress in drafting a general comment on article 5 of the Convention. The Committee adopted in a public meeting its general comment No. 6 (2018)

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on equality and non-discrimination. The Committee endorsed a draft general comment on articles 4 (3) and 33 (3) of the Convention and decided to make a call for submissions to all interested stakeholders. The deadline is 15 May 2018.

VI. Activities related to the Optional Protocol

7. On 16 February, the Committee examined two communications. With regard to *Given v. Australia* (CRPD/C/19/D/19/2014), the Committee found that the failure to provide the author with access to an electronic voting platform already available in the State party, or to provide her with an alternative that would have enabled her to cast her vote without having to reveal her voting intention to another person, had resulted in a denial of her rights under article 29 (a) (i) and (ii), read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and 9 (1) and (2) (g) and of the Convention. In *Bacher v. Austria* (CRPD/C/19/D/26/2014), the Committee concluded that the multidimensional consequences of the decisions adopted by the State party's authorities on the accessibility rights of the author had been ignored, leaving to his family the responsibility of finding ways to enable his access to his home and to the external public services that he needed for his daily life, in violation of article 9, read alone and in conjunction with article 3 of the Convention.

8. On 8 March, the Committee adopted the report of the rapporteur on follow-up to Views. The Committee decided to maintain the follow-up procedure ongoing on all of them and to send follow-up letters to the State parties concerned with a view to providing guidance on the Committee's expectations in terms of the implementation of its recommendations. The Committee also adopted the report of the Special Rapporteur on new communications on the complaints received since the eighteenth session and the status of registered communications.

9. The Committee considered matters related to inquiry proceedings pursuant to articles 6 and 7 of the Optional Protocol.

VII. Other decisions

10. The Committee adopted the present report on its nineteenth session.

11. The full list of the decisions adopted by the Committee is available in annex I to the present report.

VIII. Future sessions

12. The twentieth session of the Committee is scheduled to be held from 27 August to 21 September 2018 and will be followed by the tenth meeting of the pre-sessional working group, from 24 to 28 September 2018.

IX. Accessibility of the Committee's meetings

13. Remote captioning was provided by the United Nations in all official public and in four private meetings. International Sign interpretation was provided during public meetings. National sign language interpretation was provided during the dialogues with three States parties to the Convention. Russian Sign Language interpretation was provided in all public and private meetings. Webcasting was provided during public meetings.

X. Cooperation with relevant bodies

A. Cooperation with United Nations organs and specialized agencies

14. At the opening meeting of the session, representatives of the following United Nations agencies, departments and programmes made statements: OHCHR, the United Nations Children's Fund, the World Health Organization and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). The Committee also met with the Chair of the Committee on Victim Assistance of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The Committee heard updates of the activities of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Independent Expert on the enjoyment of all human rights by older persons; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

15. The Bureau of the Committee met with the Special Rapporteur on the rights of persons with disabilities to discuss matters relating to coordination of the mandate of the Special Rapporteur with that of the Committee.

16. The Chair of the Committee participated in the annual interactive debate on the rights of persons with disabilities organized by the Human Rights Council on the theme of such persons' right of access to justice. She also participated at a side event on the realization of the rights of all migrant women through the global compact on migration, organized by OHCHR, UN-Women and the Global Alliance of National Human Rights Institutions, and at a side event organized by the Permanent Mission of Kazakhstan to the United Nations Office and other international organizations in Geneva on monitoring activities at the national level. A written statement by the Chair on the 70th Anniversary of the Universal Declaration of Human Rights and the 25th Anniversary of the Vienna Declaration and Programme of Action was submitted to the Human Rights Council.

B. Cooperation with non-governmental organizations and other bodies

17. The Committee was addressed by representatives of the International Disability Alliance, the European Network of Users and Survivors of Psychiatry, the Centre for Human Rights of Users and Survivors of Psychiatry, the Leprosy Mission, the Global Initiative for Inclusive Information and Communication Technologies, Plan International, Child Rights Connect and organizations of persons with disabilities from the countries considered by the Committee during the session.

18. The Committee held a first interactive annual debate with national human rights institutions, which focused on sharing their practices in monitoring article 19 of the Convention and on the participation of persons with disabilities in monitoring activities at the national level.

19. A thematic side event on standards in implementing sexual and reproductive health and the rights of women and girls with disabilities was organized by Creating Resources for Empowerment in Action, Women Enabled International, International Disability Alliance and the Centre for Reproductive Rights.

XI. Consideration of reports submitted in accordance with article 35 of the Convention

20. The Committee considered the initial reports of Haiti (CRPD/C/HTI/1), Nepal (CRPD/C/NPL/1), Oman (CRPD/C/OMN/1), the Russian Federation (CRPD/C/RUS/1), Seychelles (CRPD/C/SYC/1), Slovenia (CRPD/C/SVN/1) and the Sudan (CRPD/C/SDN/1). The Committee adopted concluding observations on those reports, which are available from its website.

21. The Committee adopted lists of issues under the simplified reporting procedure regarding Costa Rica (CRPD/C/CRI/QPR/2-3), New Zealand (CRPD/C/NZL/QPR/2-3), Paraguay (CRPD/C/PRY/QPR/2-3) and the Republic of Korea (CRPD/C/KOR/QPR/2-3).

XII. Conference of States Parties to the Convention

22. The Committee confirmed that it would be represented at the eleventh session of the Conference of States Parties to the Convention by its Chair and one Vice-Chair.

Annex I

Decisions adopted by the Committee at its nineteenth session

1. The Committee adopted concluding observations in relation to the initial reports of the following countries: Haiti (CRPD/C/HTI/1), Nepal (CRPD/C/NPL/1), Oman (CRPD/C/OMN/1), Russian Federation (CRPD/C/RUS/1), Seychelles (CRPD/C/SYC/1), Slovenia (CRPD/C/SVN/1) and Sudan (CRPD/C/SDN/1).

2. The Committee adopted lists of issues under the simplified reporting procedure in relation to the following countries: Costa Rica (CRPD/C/CRI/QPR/2-3), New Zealand (CRPD/C/NZL/QPR/2-3), Paraguay (CRPD/C/PRY/QPR/2-3) and Republic of Korea (CRPD/C/KOR/QPR/2-3).

3. The Committee considered matters related to its communication and inquiry procedures pursuant to articles 6 and 7 of the Optional Protocol. The Committee considered two communications. It found violations in both of them. A summary of the Views of the Committee can be found in annex II to the present report.

4. The Committee adopted its general comment No. 6 (2018) on equality and non-discrimination.

5. The Committee endorsed a draft general comment on articles 4 (3) and 33 (3) and decided to make a call for submissions to all interested stakeholders. The deadline for submissions is 15 May 2018.

6. With regard to countries to be considered at its twentieth session and country rapporteurs, the Committee decided to consider the following countries: Algeria (Coomara Pyaneandee), Bulgaria (Danjan Tatic), Malta (Coomara Pyaneandee), Philippines (Hyum-Shik Kim), Poland (Jonas Ruskus), South Africa (Danlami Basharu) and the former Yugoslav Republic of Macedonia (Martin Babu). The Committee also decided to adopt lists of issues under its simplified reporting procedure regarding Austria, Azerbaijan, Germany, Mongolia and Sweden. It also decided to adopt a list of issues regarding Iraq. The Committee instructed its Secretariat to inform all concerned permanent missions of those countries.

7. The Committee decided that its twentieth session would be held from 27 August to 21 September 2018 and would be followed by the tenth meeting of the pre-sessional working group, from 24 to 28 September 2018. During the latter, the Committee requested its working group to adopt lists of issues in respect of the Niger, Norway, Rwanda, Saudi Arabia, Senegal, Turkey and Vanuatu. The Committee instructed its Secretariat to inform the countries concerned.

8. The Committee adopted a statement on the new urban agenda and a statement on the international day of sign languages.

9. The Committee decided to amend its working methods to clarify further the matter of confidentiality for third parties invited to participate in private meetings.

10. The Committee adopted a report on follow-up activities in relation to concluding observations. It decided to put these activities on hold and to identify priority recommendations to be implemented by States parties in its concluding observations. It also adopted a follow-up report on Views on communications.

11. The Committee welcomed the initiative taken by the United Nations Office at Geneva to produce core documents of the Committee in plain English. It decided to request the Secretariat to validate further these documents with persons with intellectual disabilities with a view to posting them on the Committee's website.

12. The Committee considered matters related to its working methods and in particular the effective use of meeting time during dialogue with States parties. It decided to request its working group on working methods to continue to be seized of the matter during the intersessional period and to submit proposals to the Plenary at the twentieth session.

13. The Committee and the Global Alliance of National Human Rights Institutions adopted a joint statement on monitoring article 19 at the national level.

14. The Committee adopted the present report on its nineteenth session.

Annex II

Summary of the Views adopted by the Committee regarding communications submitted under the Optional Protocol

1. The Committee examined the communication in the case of *Given v. Australia*. The author had claimed to be a victim of violations by the State party of article 29 (a) (i)–(iii), read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and (3) and 9 of the Convention. The author had cerebral palsy and, as a result, she had limited muscle control and dexterity and no speech. She used an electric wheelchair for mobility and an electronic synthetic speech-generating device for communication. On 7 September 2013, federal elections had been held in the states and territories for the House of Representatives and for the Senate. At the time of the elections, the author had wanted to vote by secret ballot on an equal basis with other electors. However, she had been unable to mark a ballot paper and fold and deposit it in a ballot box without live assistance. She had argued that, in order to be able to cast an independent and secret ballot, she would have required access to an electronic voting system, such as a computer-generated interface. However, pursuant to the Electoral Act, electronically assisted voting had only been made available to persons with visual impairments registered as such. The author had claimed that the State party had violated her rights, as it had denied her the rights to accessible voting procedures and facilities and to vote by secret ballot utilizing assistive technology. The author had argued that there existed a well-tested and well-functioning electronic voting system that had been in operation in the State of New South Wales since 2011, which had allowed her to cast an independent vote by secret ballot in state elections. She had argued that the real barrier to the use of an electronic voting system in federal elections had been the State party's refusal to amend the Electoral Act to permit its generalized use. The Committee noted the State party's submission that persons with disabilities had access to a range of accessible and appropriate voting options under the Electoral Act in the State party, and that the author had had the option of voting in a number of different ways, including with live assistance at fully accessible polling places. The Committee further noted the State party's submission that the requirement to facilitate the use of assistive technology had been a general or aspirational obligation required of States parties, which needed to be fulfilled only in cases in which it was appropriate, and that it was up to the State party to decide how to allocate limited resources. The Committee recalled that the obligation to implement accessibility was unconditional. It further noted that an electronic voting option that enabled the author to cast an independent and secret vote in the manner of her choice had been used in New South Wales state elections since 2011. It also noted that the State party had not provided any information that could justify the claim that the use of such an electronic voting option would have constituted a disproportionate burden so as to prevent its use in the 2013 federal election for the author and for all persons requiring such accommodation. The Committee therefore found that the failure to provide the author with access to an electronic voting platform already available in the State party, or to provide her with an alternative that would have enabled her to cast her vote without having to reveal her voting intention to another person, had resulted in a denial of her rights under article 29 (a) (i) and (ii), read alone and in conjunction with articles 4 (1) (a), (b), (d), (e) and (g), 5 (2) and 9 (1) and (2) (g) of the Convention.

2. The Committee examined the communication in the case of *Bacher v. Austria* (CRPD/C/19/D/26/2014). Simon Bacher had been born with Down's syndrome, he was on the autism spectrum and occasionally needed a wheelchair. He also had a chronic pulmonary condition and immunodeficiency that required regular medical assistance. Mr. Bacher lived in the town of Vomp, in a house that his family had bought in 1983. The house, and the two neighbouring houses, were only accessible by a footpath, which had an 18 per cent gradient. When it rained, snowed or hailed, the path became particularly dangerous for Mr. Bacher and the persons who helped him. As he grew, his parents had become unable to carry him and had decided to build a roof over the path to protect it from bad weather. Planning permission had been granted, with the agreement of the immediate neighbours. However, the owners of one of the neighbouring houses had not been invited to

attend the meeting to discuss the planning permission, as by law only those neighbours living within 15 metres of the place of the construction needed to be consulted. In compliance with the licence granted by the Vomp municipality, and with a grant from the Tyrol local government, a roof had been built between November and December 2001. Those neighbours had sued the author's parents before the Schwaz District Court, claiming that the roof had reduced the width of the path and that its height had violated their right of way. In July 2002, the Court had decided in favour of the neighbours and had ordered the roof to be demolished. The case had become the object of media attention. The Bacher family and their neighbours had entered into a long legal process to establish the legal responsibility of each of the property owners to maintain the path. Between 2011 and 2012, the Disability Ombudsman had attempted to mediate with the Mayor of Vomp, who had suggested that Mr. Bacher should be placed in a home or that the whole family should move away. In February 2012, the Schwaz District Court had again ruled against the Bacher family on the grounds that the neighbours barely used the path and were therefore not responsible for its maintenance. Mr. Bacher's family had not appealed against that decision because they had been told by all the lawyers that they had consulted that no further remedy was available. The author had claimed that the State party's decisions had amounted to a violation of Mr. Bacher's rights under articles 12, 13 and 22 of the Convention. In its decision finding violations of the Convention, the Committee noted the State party's submission that the complaint should have been held inadmissible because the facts referred to had occurred before the entry into force of the Optional Protocol in the State party, and because the author had not exhausted all domestic remedies. However, the Committee considered that some of the facts submitted to it had taken place after the entry into force of the Convention and the Optional Protocol for the State party; that the appeal referred to by the State party had constituted an extraordinary remedy that did not have to be exhausted for the purposes of admissibility; and that the other remedies referred to were not applicable in the case of the author. The Committee therefore declared the communication admissible, insofar as it raised issues under article 9, read alone and in conjunction with article 3 of the Convention. As to the merits, the Committee noted the argument of the State party that the right of way granted to the neighbours of the Bacher family had given rise to a dispute between individuals, which had not been directly initiated by the authorities. It also noted the State party's argument that the obligations of the State party extended only to private legal relationships in which entities offered facilities and services that were available or offered to the public, and did not extend to "purely private matters". However, the Committee recalled that that type of dispute was governed by the legal order of the State party, which, in any event, bore the ultimate responsibility to ensure that the rights under the Convention were respected, including the right for a person with disabilities to have access to his or her home, but also to have access to community life and to public services, such as education and health. Accordingly, although disputes resulting from the construction of a roof on a path were between two individuals, the State party had an obligation, inter alia, to guarantee that the decisions adopted by its authorities did not infringe upon the rights of the Convention. The Committee further recalled that accessibility was a precondition for persons with disabilities to live independently and participate fully and equally in society. In compliance with article 9, States parties should take appropriate measures to ensure that persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation and to other facilities and services open or provided to the public, both in urban and in rural areas. Those measures should include the identification and elimination of obstacles and barriers to accessibility. In that context, the focus was no longer on legal personality and the public or private nature of those who own buildings, transport infrastructure, vehicles, information and communication and services. Persons with disabilities should have equal access to all goods, products and services that are open or provided to the public in a manner that ensures their effective and equal access and respects their dignity. The Committee noted that, by its decision dated 9 February 2012, the Schwaz District Court had adopted the same line as the previous decisions of the courts of the State party in the present case: it had not made a thorough analysis of the special needs of Mr. Bacher, despite the fact that they had been clearly referred to by his parents, as in all previous court hearings and summons. The multidimensional consequences of the decisions adopted by the State party's authorities on the accessibility rights of Mr. Bacher had therefore been ignored, leaving to his family the

responsibility of finding ways to enable his access to his home and to the external public services that he needed for his daily life. The Committee therefore considered that the decision of the Schwaz Court of 9 February 2012, read in the context of the previous judicial decisions adopted by the courts of the State party in the case, constituted a denial of justice for Mr. Bacher, in violation of article 9, read alone and in conjunction with article 3 of the Convention.